

EXTRACTS FROM MINUTES OF THE CITY COUNCIL

A regular meeting of the City Council of the City of Durham, North Carolina, was duly held on October 3, 2011 at 7:00 p.m. in the City Council Chamber at City Hall, 101 City Hall Plaza, Durham, North Carolina. Mayor William V. Bell presiding.

The following members were present:

The following members were absent:

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Council Member _____ moved that the following resolution, copies of which having been made available to the City Council, be adopted:

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY OF DURHAM, NORTH CAROLINA,
APPROVING AN INSTALLMENT PURCHASE CONTRACT AND DELIVERY
THEREOF AND PROVIDING FOR CERTAIN OTHER RELATED MATTERS.**

WHEREAS, the City of Durham, North Carolina (the “City”) is a duly and regularly created, organized and validly existing municipal corporation of the State of North Carolina, existing as such under and by virtue of the Constitution, statutes and laws of the State of North Carolina (the “State”);

WHEREAS, the City has the power, pursuant to Section 160A-20 of the General Statutes of North Carolina, as amended, to (a) purchase real and personal property, (b) enter into installment purchase contracts in order to finance the purchase of real and personal property used, or to be used, for public purposes, and (c) grant a security interest in some or all of the property purchased to secure repayment of the purchase price;

WHEREAS, the City Council of the City (the “City Council”), hereby determines that it is in the best interests of the City to receive an advance of funds in an aggregate principal amount of not more than \$3,100,000 by (a) entering into an installment purchase contract (the “Contract”) with a financial institution to be determined (the “Bank”) in order to finance the acquisition of vehicles (the “Equipment”) and (b) securing repayment thereunder by filing a Uniform Commercial Code financing statement (the “Financing Statement”) related to the Equipment;

WHEREAS, the Equipment is or will be owned and operated by the City to serve the citizens of the City;

WHEREAS, the City hereby determines that the acquisition of the Equipment is essential to the City’s proper, efficient and economic operation and to the general health and welfare of its inhabitants; that the acquisition of the Equipment has or will provide an essential use and has or will permit the City to carry out public functions that it is authorized by law to perform; and that entering into the Contract is necessary and expedient for the City by virtue of the findings presented herein;

WHEREAS, the City hereby determines that the estimated cost of the acquisition of the Equipment is an amount not to exceed \$3,100,000 and that such cost of the Equipment exceeds the total amount that can be prudently raised from currently available appropriations, unappropriated fund balances and non-voted bonds that could be issued by the City in the current fiscal year pursuant to Article V, Section 4 of the Constitution of the State;

WHEREAS, although the cost of acquiring the Equipment pursuant to the Contract is expected to exceed the cost of acquiring the Equipment pursuant to a bond financing for the same undertaking, the City hereby determines that the cost of acquiring the Equipment pursuant to the Contract and the Financing Statement and the obligations of the City thereunder are preferable to a general obligation bond financing or revenue bond financing for several reasons, including but not limited to the following: (a) the cost of a special election necessary to approve a general obligation bond financing, as required by the laws of the State, would result in the expenditure of significant funds; (b) the time required for a general obligation bond election would cause an unnecessary delay which would thereby decrease the financial benefits of acquiring the Equipment; and (c) insufficient revenues are produced by the operation of the Equipment so as to permit a revenue bond financing;

WHEREAS, the City hereby determines that the estimated cost of acquiring the Equipment pursuant to the Contract reasonably compares with an estimate of similar costs under a bond financing for the same undertaking as a result of the findings delineated in the above preambles;

WHEREAS, the obligation of the City to make Installment Payments under the Contract is a limited obligation of the City payable solely from currently budgeted appropriations of the City and does not constitute a pledge of the faith and credit of the City within the meaning of any constitutional debt limitation;

WHEREAS, to secure the City's obligations under the Contract, the City will deliver a North Carolina Uniform Commercial Code Financing Statement (the "*Financing Statement*") for the benefit of the Bank creating a lien on all of the right, title and interest of the City in the Equipment;

WHEREAS, the City does not anticipate future property tax increases solely to pay installment payments falling due under the Contract in any fiscal year during the term of the Contract;

WHEREAS, Parker Poe Adams & Bernstein LLP, as special counsel ("*Special Counsel*"), will render an opinion to the effect that entering into the Contract and the transactions contemplated thereby are authorized by law and constitute a purpose for which public funds may be expended pursuant to the Constitution and laws of the State;

WHEREAS, no deficiency judgment may be rendered against the City in any action for its breach of the Contract, and the taxing power of the City is not and may not be pledged in any way directly or indirectly or contingently to secure any moneys due under the Contract;

WHEREAS, the City is not in default under any of its debt service obligations;

WHEREAS, the City's budget process and Annual Budget Ordinance are in compliance with the Local Government Budget and Fiscal Control Act, and external auditors have determined that the City has conformed with generally accepted accounting principles in preparing its Annual Budget Ordinance;

WHEREAS, past audit reports of the City indicate that its debt management and contract obligation payment policies have been carried out in strict compliance with the law, and the City has not been censured by the North Carolina Local Government Commission (the "*LGC*"), external auditors or any other regulatory agencies in connection with such debt management and contract obligation payment policies;

WHEREAS, there has been presented to the City Council the form of the Contract, copies of which are attached hereto, which the City proposes to approve, enter into and deliver, as applicable, to effectuate the proposed financing at the Interest Rate (as defined in the Contract) and for a maximum principal amount of \$3,100,000 as specified in the Contract; and

WHEREAS, it appears that the Contract is in appropriate form and is an appropriate instrument for the purposes intended;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DURHAM, NORTH CAROLINA, AS FOLLOWS:

Section 1. Ratification of Prior Actions. All actions of the Manager, the Finance Director of the City and the City Clerk and their respective designees in effectuating the proposed financing are hereby

approved, ratified and authorized pursuant to and in accordance with the transactions contemplated by the Contract.

Section 2. Approval, Authorization and Execution of Contract. The City hereby approves the acquisition of the Equipment in accordance with the terms of the Contract, which will be a valid, legal and binding obligation of the City in accordance with its terms. The City hereby approves the amount to be advanced by the Bank to the City pursuant to the Contract in an aggregate principal amount not to exceed \$3,100,000, such amount to be repaid by the City to the Bank as provided in the Contract. The form, terms and content of the Contract are in all respects authorized, approved and confirmed, and the Mayor, the City Manager, the Finance Director of the City and the City Clerk or their respective designees are authorized, empowered and directed to execute and deliver the Contract for and on behalf of the City, including necessary counterparts, in substantially the form attached hereto, but with such changes, modifications, additions or deletions therein as shall to them seem necessary, desirable or appropriate, their execution thereof to constitute conclusive evidence of their approval of any and all such changes, modifications, additions or deletions, and that from and after the execution and delivery of the Contract, the Mayor, the City Manager, the Finance Director of the City and the City Clerk or their respective designees are hereby authorized, empowered and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of the Contract as executed.

Section 3. Further Actions. The Mayor, the City Manager, and the Finance Director of the City are hereby designated as the City's representatives to act on behalf of the City in connection with the transactions contemplated by the Contract, and the Mayor, the City Manager, and the Finance Director of the City are authorized and directed to proceed with the acquisition of the Equipment in accordance with the terms of the Contract, to file the Financing Statement, and to seek opinions on matters of law from the City Attorney, which the City Attorney is authorized to furnish on behalf of the City, and opinions of law from such other attorneys for all documents contemplated hereby as required by law. The Mayor, the City Manager, and the Finance Director of the City are hereby authorized to designate one or more employees of the City to take all actions which the Mayor, the City Manager, and the Finance Director of the City are authorized to perform under this Resolution, and the Mayor, the City Manager, the Finance Director of the City or their designees are in all respects authorized on behalf of the City to supply all information pertaining to the transactions contemplated by the Contract. The Mayor, the City Clerk, the City Manager, and the Finance Director of the City are authorized to execute and deliver for and on behalf of the City any and all additional certificates, documents, opinions or other papers and perform all other acts as may be required by the Contract or as they may deem necessary or appropriate in order to implement and carry out the intent and purposes of this Resolution.

Section 4. Repealer. All motions, orders, resolutions, ordinances and parts thereof, in conflict herewith are hereby repealed.

Section 5. Severability. If any section, phrase or provision of this Resolution is for any reason declared to be invalid, such declaration shall not affect the validity of the remainder of the sections, phrases or provisions of this Resolution.

Section 6. Effective Date. That this Resolution is effective on the date of its adoption.

Yeas

Nays

STATE OF NORTH CAROLINA)
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CITY OF DURHAM) SS:

I, D. Ann Gray, duly appointed City Clerk of the City of Durham, North Carolina, *DO HEREBY CERTIFY*, that the foregoing is a true and accurate copy of Resolution No. _____ which was adopted by the City Council of the City of Durham, North Carolina, at its regular meeting held on October 3, 2011, to become effective on October 3, 2011, and that such Resolution No. _____ has been duly recorded in the minutes of the City.

WITNESS my hand and the corporate seal of the City of Durham, North Carolina, this ____ day of October, 2011.

(SEAL)

D. Ann Gray
City Clerk of the
City of Durham, North Carolina